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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION  
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12 EXPRESS DIAGNOSTICS INT'L, INC., )  
13 Plaintiff, )  
14 v. )  
15 BARRY M. TYDING, et al., )  
16 Defendants. )  
17 \_\_\_\_\_ )  
18 AND RELATED CROSS ACTION )

Case No.: C 06-1346 JW (PVT)

**ORDER RE PLAINTIFF'S MOTION  
FOR PROTECTIVE ORDER;AND**

**ORDER OVERRULING PLAINTIFF'S  
OBJECTION TO JOINDERS OF  
DEFENDANTS BEENTJES, TYDINGS  
AND KISERA IN OPPOSITION TO  
MOTION AND DENYING MOTION TO  
STRIKE**

19 On March 13, 2008, Plaintiff filed a Motion for Protective Order and Request for Stay  
20 Pending Resolution of Location and PMKs for Rule 30(b)(6) Deposition of Express Diagnostics  
21 International ("Plaintiff's Motion for Protective Order"). The motion was continued to August 26,  
22 2008, due to attorney William N. Woodson's withdrawal as counsel for certain Defendants and  
23 Judge Ware's orders staying all pending filing deadlines first for 30 days and then to August 7, 2008  
24 (based on Defendant Tyding's heart surgery, and his critical and unstable health condition). On  
25 August 7, 2008, Defendants Patrick Beentjes, Elizabeth Beentjes, and Twin Spirit, Inc. filed a  
26 belated joinder in Defendant Amedica Biotech, Inc.'s opposition to Plaintiff's motion. On August  
27 15, 2008, Defendant Barry Tyding, proceeding *in pro per*, filed a belated opposition to Plaintiff's  
28 motion. On August 20, 2008, Plaintiff filed an "Objection to the Joinder of Defendants Beentjes,

1 Tydings and Kisera [Sic] in Opposition to Motion for Protective Order and Request to Strike.” In  
2 addition to objecting to the belated filings, Plaintiff responded to those briefs on the merits. On  
3 August 21, 2008, Defendants Amedica Biotech, Inc. And Jianfeng “Jeff” Chen filed a “Rejoinder to  
4 Plaintiff’s Objection to Joinder.” The latter two documents filed by attorneys Mendoza and Strabala  
5 are replete with obstructionist posturing, sarcasm and hyperbole which is unbecoming an officer of  
6 the court. Based on the briefs and declarations submitted and the file herein,

7 IT IS HEREBY ORDERED that Plaintiff’s motion for protective order is DENIED,  
8 conditioned on Defendants cooperating in developing a deposition schedule for *all* party depositions  
9 to be conducted in the San Francisco Bay Area so as to minimize the number of trips each party or  
10 their counsel must make. Counsel for the represented parties shall attend a deposition scheduling  
11 conference *in person* in this court’s conference room, with the *pro per* parties participating either in  
12 person or by telephone at their option. Counsel and the pro per parties shall promptly meet and  
13 confer to select a day and time for the deposition scheduling conference. Counsel shall check with  
14 this court’s courtroom deputy to ensure that Judge Trumbull will be available on the date selected.<sup>1</sup>  
15 If the parties cannot agree on a day and time, then no later than September 2, 2008, each party shall  
16 file a declaration setting forth all scheduling information for themselves and their counsel during the  
17 months of September, October and November and the court will set the schedule as it sees fit.

18 IT IS FURTHER ORDERED that Plaintiff’s request that the court limit to two the number of  
19 Rule 30(b)(6) designees it must produce is DENIED as unnecessary. Plaintiff erroneously assumes  
20 that Rule 30(b)(6) requires it to designate the “persons most knowledgeable” about the topics  
21 identified in the deposition notice. That is the California state rule. Rule 30(b)(6) requires only that:

22 “[t]he named organization must then designate one or more officers, directors, or  
23 managing agents, or designate other persons who consent to testify on its behalf; and  
24 it may set out the matters on which each person designated will testify. A subpoena  
25 must advise a nonparty organization of its duty to make this designation. The persons  
designated must testify about information *known or reasonably available to the  
organization.*” (Emphasis added.)

26 Thus, so long as the designated individual is adequately prepared to provide the information “known  
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28 <sup>1</sup> While the court expects the parties to be able to schedule the depositions without assistance, in light of the antagonism between attorneys Strabala and Mendoza, the court prefers to be available to immediately resolve any conflicts.

1 or reasonably available to the organization” about a specified topic, he or she need not be the “person  
 2 most knowledgeable” about that topic. The decision regarding how many individuals to designate  
 3 and have prepare to fully testify on any given topic(s) is up to the party responding to the Rule  
 4 30(b)(6) deposition notice.<sup>2</sup> *See Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126  
 5 (M.D.N.C. 1989)) (noting that if the persons designated by the corporation do not possess personal  
 6 knowledge of the matters set out in the deposition notice, the corporation is obligated to prepare the  
 7 designees so that they may give knowledgeable and binding answers for the corporation).

8 IT IS FURTHER ORDERED that Plaintiff’s objection and request to strike the belated  
 9 filings by Defendants Patrick Beentjes, Elizabeth Beentjes, Twin Spirit, Inc. and Barry Tydings is  
 10 OVERRULED and DENIED. While the better practice would have been for these Defendants to  
 11 seek leave of court, under the circumstances of this case such leave would have been granted. Had  
 12 Plaintiff then wished to file a further reply, leave to do so would also be granted. And, in fact,  
 13 Plaintiff did include further reply arguments in her objection and request to strike.

14 IT IS FURTHER ORDERED that counsel shall refrain from including any further  
 15 inflammatory language in future briefs and declarations submitted in connection with any discovery  
 16 disputes. The court expects its officers to conduct themselves with civility and to treat each other  
 17 with courtesy. The personal animosity attorneys Strabala and Mendoza have displayed toward each  
 18 other has no place in court filings.

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 20 <sup>2</sup> The Ninth Circuit, in *dicta*, has suggested that a corporation served with a Rule 30(b)(6)  
 21 notice must produce the “most qualified” person to testify. *See Mattel Inc. v. Walking Mountain*  
 22 *Productions*, 353 F3d 792, 798, fn. 4 (9<sup>th</sup> Cir. 2003). However, the Ninth Circuit did not explain what  
 23 it meant by “most qualified,” and both Rule 30(b)(6) and numerous cases interpreting it have made clear  
 24 that it only requires a responding corporation to designate one or more individuals to testify on its behalf,  
 25 and to prepare those individuals to fully testify about each topic for which each has been designated to  
 26 testify. *See, e.g., Marker v. Union Fidelity Life Insurance Co.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989)  
 27 (responding corporation obligated to “prepare [one or more witnesses] so that they may give complete,  
 28 knowledgeable and binding answers on behalf of the corporation”). Once a designated witness has been  
 prepared to fully testify, that person is arguably the “most qualified,” even if he or she was not initially  
 the most *knowledgeable*. The fact that 30(b)(6) does not require production of the most  
 “knowledgeable” person is evinced both by the lack of any such requirement in the rule, and by the fact  
 that the rule requires the corporation to obtain consent to testify from individuals who are not officers,  
 directors, or managing agents. Thus, where the person most “knowledgeable” is not an officer, director,  
 or managing agent, a corporation cannot be compelled to produce that person for deposition if he or she  
 does not consent. *See FED.R.CIV.PRO. 30(b)(6) advisory committee notes* (1970 amends.) (“an employee  
 or agent who has an independent or conflicting interest in the litigation—for example, in a personal injury  
 case—can refuse to testify on behalf of the organization”).

1 IT IS FURTHER ORDERED that counsel for Defendant Amedica Biotech, Inc. shall  
2 promptly notify the Defendants representing themselves *in pro per* of the contents of this order and  
3 that the hearing set for August 26, 2008 is off calendar.

4 Dated: 8/22/08

  
5 PATRICIA V. TRUMBULL  
6 United States Magistrate Judge  
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3 *Counsel automatically notified of this filing via the court's Electronic Case Filing system.*  
4

5 copies mailed on \_\_\_\_\_ to:

6 Barry M. Tydings  
7 723 Casino Center Blvd., #2  
8 Las Vegas, NV 89101

9 Merina T. Kiser  
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CORINNE LEW  
Courtroom Deputy